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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,831	01/21/2004	Victor Guerrero	034035-003	6121
27111	7590	10/12/2006		EXAMINER ALEXANDER, REGINALD
GORDON & REES LLP 101 WEST BROADWAY SUITE 1600 SAN DIEGO, CA 92101			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/762,831	GUERRERO, VICTOR	
	Examiner	Art Unit	
	Reginald L. Alexander	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 August 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11,13,14,17-24,26 and 29-37 is/are pending in the application.
 - 4a) Of the above claim(s) 17-20,34 and 35 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11,13,14,21-24,26,29-33,36 and 37 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

Applicant's election of group I, claims 1-11, 13-15, 21-24, 26 and 29-37 in the reply filed on 15 August 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

It should be noted that Applicant's elected claims 34 and 35 are not considered by the Examiner to be directed to the elected invention. The filter recited in the cover is not a part of the elected invention. Therefor claims 34 and 35 will not be examined.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the filter covered drinking hole in the top lid recited in claim 29 in combination with the plural openings of the cup recited in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

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changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 22 is objected to because of the following informalities: Claim 22 is provided with the wrong status identifier, it is listed as being withdrawn. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 29 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the specification for a cup assembly having plural holes and a lid having a drinking hole covered by a filter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen.

There is disclosed in Chen a beverage brewing and drinking cup with filter assembly, comprising: a beverage cup assembly 16; a frame 12 at the top of the assembly; a filter 14 positioned with the frame; and a top lid 18 covering the frame and filter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-8, 13 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek.

There is disclosed in Justus a beverage filter assembly, comprising: a frame 2 having a plurality of openings; a mesh cloth filter 3 disposed within the frame; a lid 6; and a support flange 4 which could be used as a handle.

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Ziemek discloses that it is known in the art to construct a filter of a wire mesh and to coat the wire mesh with a gold plating.

It would have been obvious to one skilled in the art to modify the filter of Justus with that taught by Ziemek and construct it of a wire mesh having a gold plating, in order to increase the life of the filter.

In regards to the claimed density of the filter, it would have been obvious to one skilled in the art to construct the prior art filter within the recited strands per inch range, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Claims 2-4, 9-11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek as applied to claim 1 above, and further in view of Hunnicutt, Jr.

Hunnicutt discloses the use of a conical diffuser 37, 39 having a rounded top surface, mounted within a filter element of a brewing device.

It would have been obvious to one skilled in the art to provide the filter assembly of Justus, as modified by Ziemek, with the diffuser disclosed in Hunnicutt, in order to direct a brewing fluid towards more surfaces of a beverage ingredient.

In regards to claim 4, it would have been obvious to one skilled in the art to make the diffuser integral, since it has been held that forming in one piece an article from two pieces involves only routine skill in the art.

In regards to claim 11, it is an obvious matter of design choice to have a spherical diffuser, since applicant has not disclosed that a varied shape solves any

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stated problem or is for any particular purpose and it appears that the invention would perform equally well with the shapes provided in the prior art.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek as applied to claim 1 above, and further in view of Sandvig.

Sandvig discloses the use of an inner frame within a filter assembly.

It would have been obvious to one skilled in the art to provide the device of Justus, as modified by Ziemek, with the inner frame taught by Sandvig, in order to lend support to the filter cloth.

The recited shape of the filter assembly and its elements is an obvious matter of design choice to one skilled in the art, since applicant has not disclosed that the recited shapes solves any stated problems or is for any particular purpose.

Claims 1, 14 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renner in view of Fritzsche.

There is disclosed in Renner a filter assembly, comprising: a beverage cup (support frame) (B, d') having a plurality of openings, the cup including an upper frame portion (D); a filter cloth (C') positioned within the beverage cup and supported at the upper frame; and a lid (A, A').

Fritzsche discloses that it is known in the art to use a wire filter cloth.

It would have been obvious to one skilled in the art to modify the filter of Renner with that disclosed in Fritzsche and construct it of a wire mesh, in order to increase the life of the filter.

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Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Renner in view of Fritsche as applied to claim 1 above, and further in view of Hunnicutt, Jr.

Hunnicutt discloses the use of a conical diffuser 37, 39 having a rounded top surface, mounted within a filter element of a brewing device.

It would have been obvious to one skilled in the art to provide the filter assembly of Renner, as modified by Fritsche, with the diffuser disclosed in Hunnicutt, in order to direct a brewing fluid towards more surfaces of a beverage ingredient.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Bielfeldt et al. and Sweeney et al. are cited for their disclosure of a filter suspended with the frame of a beverage cup assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Reginald L. Alexander
Primary Examiner
Art Unit 1761

rla
02 October 2006